

MEMORANDUM OF UNDERSTANDING
between
MICHIGAN DEPARTMENT OF TRANSPORTATION
and
MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

This Memorandum of Understanding is entered into between the Michigan Department of Transportation (MDOT) and the Michigan Department of Environmental Quality in accordance with Public Act 200 of 2012 for the purpose of providing funding to support the costs of the Michigan Department of Environmental Quality, Water Resources Division (MDEQ/WRD), services provided to MDOT. The MDEQ/WRD services include providing expedited permit reviews, establishing a single point of contact between public transportation agencies and MDEQ/WRD, coordinating environmental reviews, resolving informally when possible enforcement issues, and providing appropriate information as needed in accordance with Attachments A, B, C, and D. This Memorandum of Understanding also establishes the MDEQ/WRD staffing level and funding allocations for fiscal year 2013 from the Michigan Transportation Fund and the Michigan Aeronautics Fund to MDEQ/WRD in accordance with Attachment A.

This Memorandum of Understanding recognizes the statutory and constitutional duties and responsibilities of each department and is not intended to limit those duties and responsibilities. Transportation Funds and Aeronautics Funds are constitutionally restricted and cannot be used for other than transportation and aeronautics purposes, respectively.

The goal of this Memorandum of Understanding is to provide sufficient funding for MDEQ/WRD to achieve the expedited permit processing goals outlined in Attachment B.

It is agreed that MDEQ/WRD will:

1. Two months after publication of the State of Michigan Comprehensive Annual Financial Report, prepare and submit a written report to Edward A. Timpf, Financial Operations Division Administrator, Michigan Department of Transportation, the State Budget Director, and the House and Senate Fiscal Agencies stating by spending authorization account the amount of miscellaneous charges invoiced, the amount of estimated funds contracted with the MDOT, the amount of funds expended and encumbered, the amount of funds returned to the transportation funds, and the amount of any unreimbursed transportation-related costs incurred but not billed to transportation funds. The report to MDOT will be

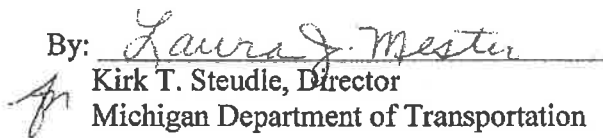
5. This Memorandum of Understanding will be in effect from October 1, 2012, through September 30, 2013. This Memorandum of Understanding and Attachments A, B, C, and D will be reviewed and renegotiated at the request of either department.

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

By: 
Dan Wyant, Director
Michigan Department of Environmental Quality

Date: 12/12/12

MICHIGAN DEPARTMENT OF TRANSPORTATION

By: 
Kirk T. Steudle, Director
Michigan Department of Transportation

DEC 18 2012

Date: _____

Attachment A

The Michigan Department of Transportation (MDOT) agrees to grant to the Michigan Department of Environmental Quality, Water Resources Division (MDEQ/WRD), the following sums, based on the costs associated with funding the necessary resources for up to eleven (11) full-time equivalents (FTEs), including salaries, fringe benefits, assessments, training, travel, equipment, and supplies, for fiscal year 2013.

From the Michigan Transportation Fund:	\$1,231,400
From the Michigan Aeronautics Fund, up to:	<u>\$ 40,000</u>
Total	<u>\$1,271,400</u>

It is agreed that:

1. The Ecological Services, Compliance, and Mitigation Unit Supervisor in the Bureau of Transportation Planning of MDOT and the Transportation and Flood Hazard Unit Chief of MDEQ/WRD will serve as the agency coordinators for this Memorandum of Understanding.
2. MDEQ will supply the MDOT agency coordinator with the necessary coding to allow MDOT to process interfund transfers via the Michigan Administrative Information Network for Michigan Transportation Funds.
3. The MDOT agency coordinator will supply the MDEQ agency coordinator with the necessary coding to allow MDEQ/WRD to process interfund transfers via the Michigan Administrative Information Network for Aeronautics Funds.
4. MDEQ/WRD will dedicate up to eleven (11) FTEs or portions of FTE positions for Public Transportation Agency (PTA) projects and will also dedicate the portions of FTE positions (with a minimum anticipated invoicing of \$20,000) for MDOT Office of Aeronautics (MDOT/Aeronautics) projects to perform the duties prescribed in this Memorandum of Understanding, maintain daily logs, and provide written reports to the MDOT agency coordinator and the Joint Agency Transportation Committee (JATC) on a quarterly basis and participate in quarterly and annual performance reviews with the JATC for the transportation-related services provided. The reports will consist of the following:
 - a. Permit applications received and processed, preliminary reviews conducted, complaints received, complaints confirmed, hydraulic reviews conducted, flood discharge estimates provided, field site inspections conducted, meetings attended, time spent on enforcement activities, and

Attachment B

It is agreed that:

1. The annual fund transfer will be credited to offset the full cost of all fees authorized under the following parts of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA):
 - * The Floodplain Regulatory Authority found in Part 31, Sections 3101-3105, 3107, 3108, Water Resources Protection;
 - * Part 301, Inland Lakes and Streams;
 - * Part 303, Wetlands Protection;
 - * Part 315, Dam Safety;
 - * Part 325, Great Lakes Submerged Lands;
 - * Part 353, Sand Dunes Protection and Management.
- for the public transportation agencies or their authorized agents(s) eligible to receive Act 51 funding, if the project is for the construction, maintenance, or improvement of a public transportation facility.
2. For qualifying public airport projects, an account will be set up annually by the Michigan Department of Transportation (MDOT), Office of Aeronautics (MDOT/Aeronautics), utilizing State Aeronautics Funds from which the Michigan Department of Environmental Quality (MDEQ), Water Resources Division (MDEQ/WRD), will draw to offset the full cost of individual permit fees and MDEQ/WRD staff time needed to comply with the conditions of the Memorandum of Understanding for MDOT/Aeronautics projects (with the exception of projects occurring at the Detroit Metropolitan Airport) as authorized under the applicable parts of NREPA, as set forth in Section 1 above.
3. For the purposes of this Memorandum of Understanding, a public transportation agency (PTA) means a public transportation agency that is eligible to receive Act 51 funds or a public airport that is regulated by MDOT/Aeronautics.
4. This Memorandum of Understanding supersedes any and all previous contractual obligations between MDOT and MDEQ/WRD with respect to providing, expediting, and coordinating services related to the permitting process and the National Environmental Policy Act (NEPA) and Section 404 of the Clean Water Act environmental clearance process (commonly known as the "NEPA/404 Merger Process").
5. This Memorandum of Understanding will be reviewed annually by the Joint Agency Transportation Committee (JATC). This Memorandum of Understanding

- iii. The JATC will review state and federal permitting requirements and develop recommendations to reduce the currently required regulatory documentation while ensuring environmental protection. As part of this process, the committee will review the MDEQ/WRD permit regulations with the intent of identifying ways to streamline the permit process without diminishing environmental protection. MDEQ/WRD and the PTAs will work jointly to obtain any required concurrence from federal agencies to allow use of modified procedures as necessary.
- iv. Procedures developed by the JATC and agreed to by all parties included in this Memorandum of Understanding will be deemed as being operational guidelines under this Memorandum of Understanding.
- v. Guidelines for removal of an agency from this Memorandum of Understanding will be developed by MDEQ/WRD with assistance from the JATC. The guidelines must be approved by the JATC.

C. PERMITS

- i. MDEQ/WRD will conduct and/or coordinate from the Lansing office field review and processing services for WRD permitting and hydrologic/hydraulic analysis on a state-wide basis for qualifying state, county, and municipal transportation and aeronautics construction and maintenance projects.
- ii. MDEQ/WRD will review the projects' impacts on the state's natural resources and assist in the resolution of conflicts between the applicant and objecting citizens or agencies and/or other MDEQ divisions and WRD sections.
- iii. MDEQ/WRD will consider applications, where appropriate, for special processing, such as emergency conditions and expedited permit applications. MDEQ/WRD will conduct expeditious reviews as necessary to meet reasonable funding and construction deadlines.
- iv. MDEQ/WRD will meet with PTAs and review their final designs for compatibility with applicable state statutes, as necessary to minimize costly delays.
- v. MDEQ/WRD will meet on site, as needed, with PTAs to resolve site specific problems as they relate to the potential impact of the design/construction on natural resources and MDEQ/WRD permitting programs.

- xii. The PTAs agree to apply for the required permits for activities regulated under Parts 31, 301, 303, 315, 325, and 353. Repeated violations of any of these statutes will lead to the individual county or municipality PTA being removed from this Memorandum of Understanding, following concurrence from the JATC. After a one-year period with no further violations of Parts 31, 301, 303, 315, 325, and 353, a PTA may apply for reinstatement to this Memorandum of Understanding with concurrence of the JATC.
- xiii. Any PTA found in violation of Parts 31, 301, 303, 325, and/or 353 must pay the appropriate after-the-fact fee, as required in the statute, unless a conditional permit is issued when emergency conditions warrant to protect the project or public health, safety, or welfare. The PTA will notify MDEQ upon project completion.
- xiv. MDEQ/WRD agrees that bankfull width is not required for an administratively complete application.
- xv. MDEQ/WRD and the PTAs have agreed that the need for a permit for road maintenance work will be governed by the criteria found in Attachment B1.

D. EARLY COORDINATION/PROJECT PLANNING

MDEQ/WRD will:

- i. Coordinate the preliminary project review with federal agencies in Section 10 and Section 404 waters, coordinate project proposals with the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, and the U.S. Environmental Protection Agency, and provide Section 401 water quality certification and certification of consistency with the Coastal Zone Management Plan, as required.
- ii. Upon request, conduct a preliminary environmental review of PTA projects and provide documentation of the findings.
- iii. Participate in transportation planning activities leading to the NEPA/404 process. MDEQ/WRD will participate in the NEPA/404 process for transportation projects as defined by the most recent version of the federal agency agreement entitled "Interagency Consensus on Concurrent NEPA/404 Processes for Transportation Projects." The PTA will provide all of the appropriate and relevant information. MDEQ/WRD will inform the PTA of the extent and content of any known issues that may jeopardize the issuance of the permit or delay the project.

- v. MDEQ/WRD will provide guidance to the PTAs on wetland related issues as needed or requested. MDEQ/WRD and the PTAs will establish a subcommittee on an as needed basis to resolve issues that arise with regard to wetland mitigation and performance standards.
- vi. MDOT will provide MDEQ/WRD with an annual summary of MDOT's Wetland Mitigation Database on or before January 31 of each year.

F. PERFORMANCE MEASURES

MDEQ/WRD agrees to the following expedited permit processing goals established by the PTAs:

- i. MDEQ/WRD will determine if applications are administratively complete and will forward to field staff within 5 work days. If MDEQ/WRD office staff determines that an application is administratively incomplete, they will provide a written statement or email to the PTA within 7 working days from receipt of the application, outlining all of the substantive information necessary for the application to be administratively complete.
- ii. If MDEQ/WRD field staff determines that an application is substantively incomplete after their site visit, they will provide a written statement to the PTA within 7 working days of the site visit, outlining all of the substantive information necessary for the application to be complete.
- iii. If MDEQ/WRD field staff determines that minor modifications of the application would result in granting of the permit, the proposed modifications will be stated in writing or email to the PTA so the PTA can modify the application.
- iv. From the date the application is considered complete, MDEQ/WRD will issue, deny, or suggest modifications to permit applications:
 - a. Within 14 calendar days for general permit/minor project projects eligible for expedited review.
 - b. Within 30 calendar days for minor project permit applications.
 - c. Within 60 calendar days for major projects, including those requiring a public notice, and MDEQ/WRD will suggest modifications within 30 days.

Flood Hazard Unit Chief or MDOT's Operations Environmental Engineer (for policy-related issues), Project Manager, or county/municipal project manager. The written request will outline the perceived conflict and what the current department positions are.

- iv. If the conflict is not resolved at the Unit/Manager level, it will be elevated via a written request to MDEQ/WRD's Field Operations Section chief or MDOT's Transportation Service Center (TSC) manager (County Engineer, City Representative). The MDEQ/WRD Section chief and the MDOT TSC manager or Operations Environmental Engineer (for policy-related issues), County Engineer, City Representative will discuss the conflict with their appropriate management before and after the meeting.
- v. If the conflict is still unresolved after step iv, it will be elevated to the MDOT Regional Engineer or Bureau of Development Engineer (for policy-related issues) or designated county or city official and the MDEQ/WRD Division Chief.

Attachment B1

MOU Clarification for Road Maintenance

5/15/2012

Part 303, section 324.30305(2)(k) currently reads:

"Maintenance or improvement of public streets, highways, or roads, within the right-of-way and in such a manner as to assure that any adverse effect on the wetland will be otherwise minimized. Maintenance or improvement does not include adding extra lanes, increasing the right-of-way, or deviating from the existing location of the street, highway, or road."

Due to USEPA's audit of Michigan's assumption of the Federal 404 program the above language is proposed to be modified to read,

"Maintenance of public streets, highways, or roads, that does not include any modification that changes the original location or footprint, and that is done in such a manner as to assure that any adverse effect on the wetland will be otherwise minimized."

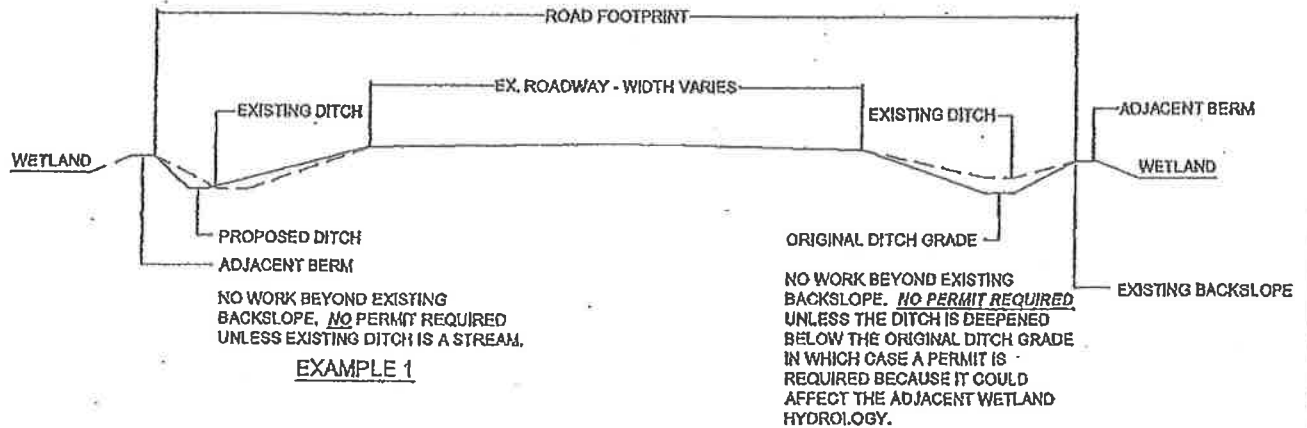
In order to clarify what is allowed under this exemption the following language has been agreed to by the Joint Agency Transportation Committee (JATC) which is responsible for implementing and overseeing the annual Memorandum of Understanding between the Michigan Department of Transportation and the Michigan Department of Environmental Quality.

Under the proposed Part 303 language, road agencies can perform general road maintenance work without a permit within the existing footprint under the following conditions (note permits may be required under Part 301, Inland Lakes and Streams or Part 31, Water Resources Protection if a stream or floodplain is involved) :

- 1) Maintenance work would include repair, reconstruction, road raising, road widening, ditch cleanout to the original ditch grade, and slope flattening that does not extend beyond the existing road footprint. (Note: if the road grade is raised more than a new wearing course (including gravel) within the floodplain of a stream with a drainage area of two square miles or more then a permit would be required under the states Floodplain Regulatory Authority found in Part 31. If the road widening results in impacts to a stream then a Part 301 permit would be required).
- 2) The footprint is defined as back slope to back slope of existing ditches that run parallel to the existing road (see figure 1). If there are no ditches present then the footprint is defined as the point where the road fill material intersects the natural ground (see figure 2).
- 3) Berms directly adjacent to a road side ditch may be maintained without a permit to original design/constructed conditions if they were in existence before October 1, 1980 or constructed pursuant to Part 303.
- 4) Ditches that are not part of a regulated stream may be:
 - a. Cleaned out or relocated within the existing backslope to original size, shape and profile (example 1). (Note: a permit would be required where the ditch is deepened beyond its original size, shape and profile if the ditch is adjacent to wetlands (example 2)).
 - b. Filled to the top of the existing backslope (example 3). (Note: a permit would be required if fill extended beyond the existing footprint (example 4)).
- 5) Wetland equalizer culverts that are not part of a regulated stream may be:
 - a. Cleaned out in the immediate vicinity to original size shape profile. (Note: the spoils must be hauled to an upland (non-wetland, non-floodplain) location.

EXAMPLE 1 & 2 - DITCH MAINTENANCE

NO SCALE

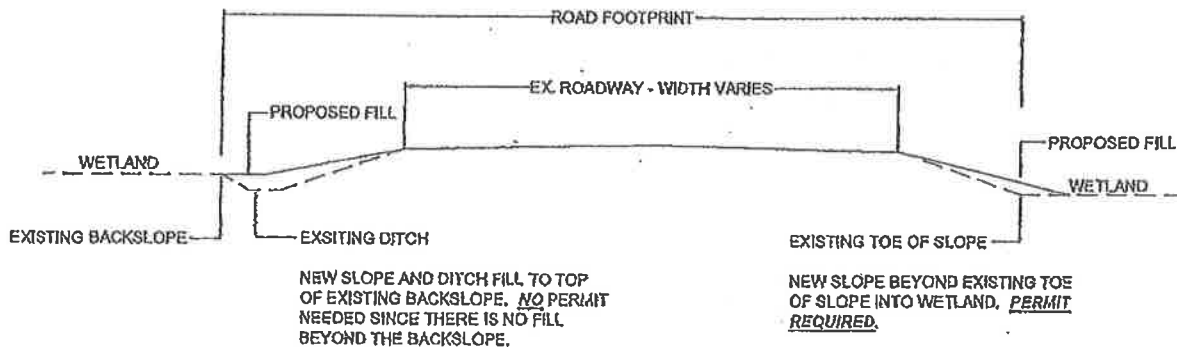


EXAMPLE 1

EXAMPLE 2

EXAMPLE 3 & 4 - DITCH MAINTENANCE

NO SCALE



EXAMPLE 3

EXAMPLE 4

* ADJACENT BERMS MAY BE MAINTAINED WITHOUT A PERMIT TO ORIGINAL DESIGNED/CONSTRUCTED CONDITIONS IF THEY WERE IN EXISTENCE BEFORE OCTOBER 1, 1980 OR CONSTRUCTED PURSUANT TO PART 303.

REVISED: MAY 17, 2012

FIGURE 1 - TYPICAL DITCH SECTION
NO SCALE

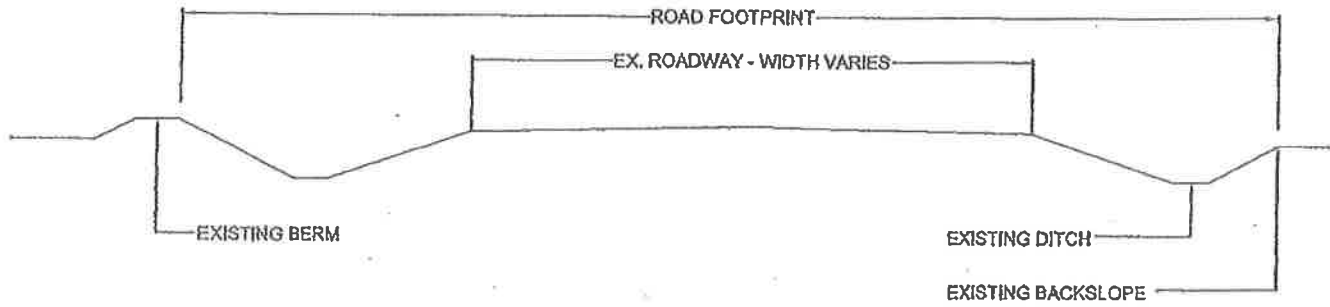
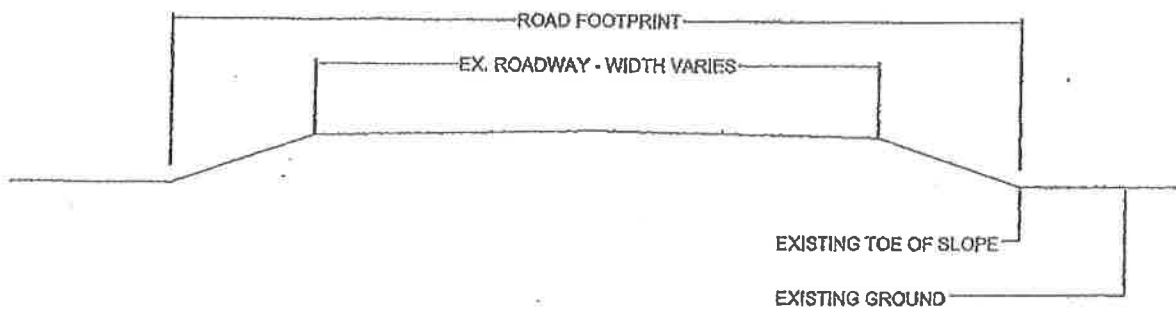


FIGURE 2 - TYPICAL FILL SECTION
NO SCALE



REVISED; MAY 17, 2012

Attachment C

Michigan Department of Transportation (MDOT)
Michigan Department of Environmental Quality (MDEQ)
Fiscal Year 2013 Memorandum of Understanding
Cost Allocation Methodology Details

Costs can be expected to fall within the following general categories: Salaries & Benefits; Travel; Contracts, Services, Supplies, and Maintenance (CSS&M); Training; Civil Service Charges; Terminal Leave Payouts; and Information Technology (IT) Charges through the Michigan Department of Technology, Management and Budget (MDTMB).

The following describes the types of costs within each category, along with the method for assigning the costs:

A – Salaries & Benefits: Costs within this category would typically consist of labor charges, along with fringe benefits such as insurance, retirement, and leave time. Direct costs result from non-administrative staff recording the time they work on programs and projects by coding block when they record their time in the Data Collection and Distribution System (DCDS). In addition, this category includes some administrative district staff costs that are allocated to all funding sources in the division based on the proportion of support required by each funding source. This proportion of support is determined by the percentage of direct costs charged by program staff to these funding sources. This allocation approach was negotiated and approved by the U.S. Environmental Protection Agency (EPA), the cognizant agency for MDEQ.

B – Travel: Travel costs are direct costs for personal mileage, meals, and lodgings incurred by employees working on various programs, charged by coding block. Employees using state vehicles record the miles driven in vehicle logs by the coding blocks related to assigned projects. The monthly flat rate costs for these vehicles are allocated based upon the proportion of miles charged to each coding block.

C – CSS&M: In the district offices, copier rentals, office supplies, telephones, utilities, office maintenance, and various overhead costs are allocated based on the proportion of MDOT-Program employees in the district offices. Mailing costs, safety equipment, etc., are direct-charged to the MDOT program based on the employees' assignments.

The Lansing based expenditures do not include utilities (except for telephones) or maintenance costs since these are MDTMB-owned buildings. Non-utility and non-maintenance costs incurred by the employees assigned to the MDOT program (such as office supplies, mailing costs, safety boots, etc.) are directly charged to the MDOT coding block.

D – Training: Job-related training for employees covered by the Memorandum of Understanding is direct-charged to the MDOT program.

FY 2013 Reporting Requirement - Attachment D

Agency Name
Report of Spending as of September 30, 2013

<u>Description of Services (by Fund)</u>	<u>Amount Received (a)</u>	<u>Expenditure (b)</u>	<u>Encumbrances</u>	<u>Unallotted Appropriation</u>	<u>***Amount of Difference (c)</u>	<u>Amount Returned</u>	<u>Explanation (d)</u>
Michigan Transportation Fund						0	
Interdepartmental Contracts						0	
Miscellaneous Charges							
State Trunkline Fund							
Interdepartmental Contracts						0	
Miscellaneous Charges						0	
Comprehensive Transportation Fund							
Interdepartmental Contracts						0	
Miscellaneous Charges						0	
State Aeronautics Fund							
Interdepartmental Contracts						0	
Miscellaneous Charges						0	
Total Interdepartmental Contracts	\$0						
Total Miscellaneous Charges	\$0						

Completion of this form is required by all state agencies receiving Transportation-related funding for services provided to MDOT. It must be completed and submitted two months after publication of the state of Michigan comprehensive annual financial report.

(a) The Amount Received column should represent the amounts received from Miscellaneous Charges and the amounts included in the Memorandum of Understanding.

(b) The Expenditure column should include cash and accrued expenditures for all services provided to the Transportation-related funds regardless of whether they were billed to or not paid for with transportation-related funds nor included as part of the MOU/contract.

(c) The Difference column is the amount received less the expenditures and encumbrances. A positive difference indicates the agency received more Transportation-related funding than they had expended. A negative difference indicates the agency did not receive enough funding to cover its expenditures.

***If there is a difference (positive or negative), the reason for the difference must be explained in column d.

Please submit this form to Dylan Smyth, MDOT - Financial Operations Division, at smythd@mdot.gov.

